

ISSUE DATE: September 18, 1996

DOCKET NO. P-413/M-95-269

ORDER DENYING RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Proposal by Lakedale
Telephone Company to Offer Three
Additional CLASS Services

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PROCEDURAL HISTORY

I. The Company's Original Proposal

On February 5, 1996 the Commission issued an Order acting on Lakedale Telephone Company's proposal to add three services -- Anonymous Call Rejection, Last Call Return, and Call Trace -- to its line of CLASS services.¹ The Company's proposal was unique in several ways.

A. Universal Anonymous Call Rejection

First, the Company proposed to offer Anonymous Call Rejection not just to Caller ID customers, as required under the generic CLASS Orders², but to all customers. The Commission considered the proposal, balancing the privacy interests of callers against the information interests of called parties, and determined that universal Anonymous Call Rejection "would dilute the privacy rights of customers who choose blocking without furthering any public policy goal". The Commission therefore rejected the proposal to offer Anonymous Call Rejection to everyone.

In examining the proposal, however, the Commission recognized that many of the reasons for requiring companies to offer Anonymous Call Rejection to Caller ID customers applied with equal force to Last Call Return customers. The Commission therefore authorized Lakedale to offer Anonymous Call Rejection to Last Call Return customers on a trial basis, making Lakedale the only company in the state to offer Anonymous Call Rejection to non-Caller ID

¹ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF ANONYMOUS CALL REJECTION, CALL TRACE, AND LAST CALL RETURN, this docket.

²In the Matter of a Commission Initiated Investigation into the Provision of Custom Local Area Signaling Services in Minnesota, Docket No. P-999/CI-92-992, ORDER ESTABLISHING CONDITIONS OF CUSTOM LOCAL AREA SIGNALING SERVICES (June 17, 1993) and ORDER AFTER RECONSIDERATION (December 3, 1993).

customers.

B. "Fixed" Anonymous Call Rejection

The Company also proposed to give Anonymous Call Rejection customers a choice between standard Anonymous Call Rejection, which the customer can activate or deactivate by dialing designated codes, or "fixed" Anonymous Call Rejection, which only the Company can deactivate. Fixed service protects against accidental deactivation, which can be important to customers who have suffered harassment or abuse. At the same time, however, fixed service prevents customers from accepting blocked calls in emergencies.

The Commission reasoned that individual customers are in the best position to weigh the trade-offs involved with fixed service. The Commission therefore permitted Lakedale to offer fixed service on a trial basis, making Lakedale the only company in the state to offer fixed Anonymous Call Rejection.

C. Call Trace Pricing

Finally, the Company proposed to provide Call Trace at no charge to customers activating the service and to add a two cent monthly surcharge to all customers' bills to recover its costs. The Commission rejected this pricing proposal, mainly because it was economically inefficient and secondarily because it created a serious risk of cost over-recovery. The Commission ordered immediate deployment of the service at a temporary price of \$1 per activation.

II. The Company's Request for Reconsideration

On February 23, 1996 the Company filed a petition for partial reconsideration of the February 5 Order. The only issue on which the Company requested reconsideration was Call Trace pricing.

The Company based its request for reconsideration on three claims:

- (1) the amount of money at stake was too small to justify Commission concern;
- (2) Commission review of Company rates for individual services is limited to whether the rates are revenue neutral;
- (3) in establishing an initial \$1 per activation price the Commission violated the Administrative Procedure Act by ignoring cost evidence submitted by Lakedale and applying an unpromulgated rule.

On March 4, 1996 the Department of Public Service (the Department) filed a response to the petition. The Department argued the Commission's decision was supported by the record and that Lakedale's cost evidence did not merit serious reliance.

The petition came before the Commission on August 6, 1996.

FINDINGS AND CONCLUSIONS

III. Factual Background

Call Trace allows a subscriber to establish a record of the time, date, and originating number of any call he or she believes should be traced. The service is activated by dialing a standard code immediately after receiving an offensive call. Tracing is effective whether or not the caller blocked the transmission of his or her originating number. The originating number is not released directly to the subscriber, but is available for use by law enforcement authorities.

Call Trace offers significant advantages over traditional technologies for tracing threatening or harassing calls, including more convenience, more privacy, and greater accuracy. It eliminates the need for victims of telephone harassment to keep careful records of the date and time of harassing calls. It eliminates the “one free call” abusers get with traditional technology, which must be specially installed upon a showing of need. In short, Call Trace is an extremely promising new tool for combating threatening and harassing phone calls. For these reasons the generic CLASS Orders require all companies offering CLASS services to offer Call Trace as soon as possible.

When Lakedale’s initial CLASS services application was approved in April 1994, the Commission granted the Company’s request for extra time to deploy Call Trace to allow it to develop a per-use pricing plan. When the Company filed a flat rate plan instead, the Commission ordered immediate deployment of Call Trace at an initial price of \$1 per activation.

This price was adopted because it was the highest of the Call Trace prices approved to date for other CLASS providers. The Commission emphasized that it would be willing to re-examine the price when actual data on usage, costs, and revenues became available. The Commission also emphasized that it was open to other rate designs for Call Trace services:

The Commission reiterates that it intends to monitor the practical effects of the various Call Trace rate designs approved to date and that it is open to other rate designs yet to be proposed. The rejection of the pricing plan at issue here today should not chill the introduction of other pricing plans. Neither should it obscure the fact that continuing experience with CLASS services may demonstrate the need for new directions in Call Trace rate design.

ORDER ESTABLISHING CONDITIONS FOR THE PROVISION OF
ANONYMOUS CALL REJECTION, CALL TRACE, AND LAST CALL
RETURN, at 10.

IV. Petition Will be Denied

The Commission has reviewed the record in this case, together with its original Order, and

concludes the petition for reconsideration must be denied for the reasons set forth below.

A. The Over-Recovery at Issue Merits Commission Concern

The Company concedes that the two-cent monthly Call Trace surcharge would over-recover costs by approximately \$256 or 9.78%. The Company claims, however, that this amount is too small to justify Commission concern. The Commission disagrees.

First, the Commission cannot view small amounts of money as insignificant when they are being incorporated into permanent rate structures. For unregulated businesses, the discipline of the marketplace will act to keep price aligned with cost. For regulated businesses, the Commission performs this function. It must view every claim that cost over-recovery is *de minimis* with deep skepticism, since, in the regulated context, rate elements tend to perpetuate themselves in rate structures not subject to frequent examination, let alone competitive pressures.³ Over time, the cumulative effect of a series of supposedly *de minimis* over-recoveries can be substantial.

Second, it is far from clear that the actual over-recovery in this case would be limited to \$256. As the original Order explains, the cost information and documentation filed by the Company were extremely sketchy. Crucial information, such as the number of call tracing requests currently processed annually, was not filed. The process used to estimate Call Trace usage rates was highly subjective, consisting mainly of informal conversations between management and customer service personnel. Core assumptions were untested and adopted on the basis of anecdotal evidence.

The central assumption on which the Company's estimate of Call Trace usage rates rests -- that the number of harassing or threatening calls investigated by local law enforcement authorities will rise substantially when Call Trace is introduced -- is neither verified nor self-evident. If that assumption is wrong, costs will be significantly lower than the estimate, since it is law enforcement involvement that drives up Call Trace costs.

The assumption may well be wrong. Activating Call Trace by dialing *57 is one thing; calling the police to follow up is another. It is not intuitively clear, and it has not been demonstrated factually, that there are large numbers of Lakedale customers who currently tolerate harassing or threatening phone calls who will seek police assistance once Call Trace becomes available. Unless this is true, the Company's cost estimates are off the mark, and the over-recovery will exceed the Company's \$256 estimate.

In short, the Commission continues to believe that the Company's cost estimates are

³Of course, new legislation opens the local exchange to competition, and the Commission has initiated a rulemaking to set the terms of that competition. Minn. Stat. 1995 Minn. Laws ch. 156. Until competition is a reality, however, the Commission must scrutinize rate proposals as carefully as ever.

unsubstantiated and do not merit serious reliance. The Company's over-recovery of Call Trace costs could significantly exceed its estimate of \$256.

B. The Commission Can Review Rates for Individual Services

Lakedale points out that, as an independent telephone company, it can normally change its rates without Commission approval. This is true. The telecommunications statutes exempt independent companies, which include Lakedale, from the general rate case process. Minn. Stat. § 237.075, subd. 9.

It is not true, however, that the Commission lacks authority over independent companies' rates for individual services. Under the complaint and investigation provisions of Minn. Stat. § 237.081 the Commission retains broad authority over all companies, independent or not, including authority over issues such as whether "any rate, toll, tariff, charge, or schedule, or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service, is in any respect unreasonable, insufficient, or unjustly discriminatory . . ." Minn. Stat. § 237.081, subd. 4. The Commission clearly has authority under this statute to regulate Lakedale's rates for individual services.

Furthermore, the Commission has a special duty to examine Call Trace rates. The Legislature has found both CLASS services and call tracing services to hold special importance for the public interest. The Legislature has directed the Commission to ensure their availability and to establish the terms and conditions under which they will be offered. Minn. Stat. §§ 237.069; 237.75. The Commission would be remiss if it failed to take a serious look at proposed rates for Call Trace, a service subject to both statutory directives.

C. Temporary Rate Imposed Not the Result of Improper Rulemaking

The Company also claimed that the Commission violated the Administrative Procedure Act by imposing a temporary Call Trace rate of \$1 per activation. The Company claimed the Commission failed to consider Lakedale's application individually on the facts presented and instead applied an unpromulgated rule that the appropriate rate for Call Trace is \$1 per activation. The Company cited Minn. Stat. §§ 14.02, subd. 4; 14.22, subd. 1; and 14.69. The Commission disagrees.

1. Commission Did Examine Company Proposal on its Own Merits

First, as the original Order makes clear, the Commission *did* analyze Lakedale's application individually on the facts presented and found it unacceptable. It was unacceptable mainly because it violated basic rate design principles of economic efficiency, but also because it lacked reliable factual support.

Both deficiencies were explained at length in the original Order. Both deficiencies continue to make the pricing proposal unacceptable.

2. Initial Price Not Product of Illegal Rulemaking

Once it determined that the Company's surcharge proposal violated sound rate design principles and lacked factual support, the Commission faced a serious dilemma. Lakedale customers had already gone without Call Trace for some 16 months since CLASS deployment; under the generic CLASS Orders they were supposed to have Call Trace as soon as possible. The Commission had given the Company extra time to develop a usage-based pricing proposal; the Company filed a flat rate proposal instead, which the Commission found unacceptable.

The Commission decided further delay in introducing Call Trace would jeopardize the public interest and required the Company to begin offering it immediately at an initial rate of \$1 per activation. The Commission emphasized that this was a temporary rate, established to get the service up and running, and that it could be adjusted when actual data on usage, costs, and revenues became available. The Commission also emphasized that it was open to other rate designs, as it had stated repeatedly in other CLASS Orders.

This decision was not based on any belief that the \$1 per activation fee was optimal, let alone the norm in Minnesota. It was based on the practical need to give Lakedale customers the same protection against harassing and threatening calls enjoyed by customers in other CLASS exchanges and the need to establish *some* price for the service. In fairness to the Company, the Commission set the Call Trace price at the highest rate approved for any CLASS provider to date.

The temporary price set in the original Order is not the only Call Trace rate in use, as the Company appears to believe. As the Order explains, the Commission has approved different Call Trace pricing plans for different companies and has expressed its interest in exploring different Call Trace rate designs. The Commission invites the Company to continue exploring innovative Call Trace pricing plans, applying the same ingenuity it used to develop the unique Anonymous Call Rejection proposals approved in the original Order.⁴ Meanwhile, however, it must continue to provide Call Trace at the temporary rate, to ensure that its customers enjoy the same protection from abusive calls enjoyed by customers in other CLASS exchanges throughout the state.

For all these reasons, the Commission rejects the Company's claim that the temporary \$1 per activation rate violates the Administrative Procedure Act.

V. Conclusion

⁴In claiming the Commission rigidly applies industry-wide standards, which amount to unpromulgated rules, to CLASS filings, the Company ignores the fact that the original Order approved two Anonymous Call Rejection proposals which are very different from those approved for all other Minnesota companies.

For the reasons set forth above, the Commission will affirm its original Order and deny the Company's petition for reconsideration.

ORDER

1. The Company's petition for partial reconsideration is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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